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7 SPECIAL MASTER

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN JOSE DIVISION**

11  
12  
13 MEDIMMUNE, LLC,

14 Plaintiff,

15 v.

16 PDL BIOPHARMA,

17 Defendants.  
18

CASE NO. C 08-5590 JF

**SPECIAL MASTER'S REPORT AND  
RECOMMENDATION RE  
MEDIMMUNE/GENENTECH 2008  
LICENSE AGREEMENT (No hrg.)**

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21 On September 14, 2010, the Court ordered the Special Master to conduct an *in camera*  
22 review of the 2008 License Agreement between Intervenor Genentech and MedImmune and to  
23 advise the Court "whether in his opinion the 2008 Agreement contains any information that  
24 might be relevant to MedImmune's liability."

25 I have reviewed the 1997 MedImmune/Genentech License Agreement (which has been  
26 produced to PDL), the Settlement Agreement dated May 12, 2008, between MedImmune and  
27 Genentech, and Amendment No. 1 to the 1997 MedImmune/Genentech License Agreement also  
28 dated May 12, 2008. I have also reviewed a letter dated September 24, 2010 from counsel for

1 Genentech, and a confidential *ex parte* letter dated September 24, 2010 from special counsel to  
2 PDL. I also had a brief *in camera* conversation with counsel for Genentech.

3 I conclude that there is little or no likelihood that the 2008 Settlement Agreement and  
4 Amendment No. 1 would provide any information relevant to the issues identified by PDL as of  
5 interest, or that the documents would be relevant to any party's claim or defense or reasonably  
6 calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1) First, the  
7 context of the 2008 Amendment No. 1 is wholly different from that surrounding the  
8 MedImmune/PDL License Agreement in 1997. Not only did 10 years separate the two  
9 agreements – and 10 years is a long time in the business world generally and the pharmaceutical  
10 business in particular – but the 2008 Amendment No. 1 was negotiated as part of the settlement  
11 of patent litigation between Genentech and MedImmune. Trade-offs regarding litigation issues  
12 not present in the 1997 PDL/MedImmune negotiations in all likelihood played a significant part  
13 in framing the terms of Amendment No. 1. Therefore, the probative value of the 2008  
14 MedImmune/Genentech documents as an aid to interpreting the 1997 PDL/MedImmune License  
15 Agreement is minimal to non-existent. Second, in Amendment No. 1 there is nothing in the  
16 language of the pertinent provisions referenced by PDL in its submission to me that sheds any  
17 light one way or another on the interpretation of comparable provisions, or on the treatment of  
18 end-sales by Abbott, in the PDL/MedImmune License Agreement,.

19 The confidentiality protection surrounding the MedImmune/Genentech 2008 documents  
20 prevents me from providing any more detailed reasoning for my conclusion.

21 Accordingly, I recommend that Genentech's motion for protective order be GRANTED,  
22 and PDL's cross-motion to compel be DENIED, with respect to the 2008 Settlement Agreement  
23 and Amendment No. 1 between Genentech and MedImmune.

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26 Dated: October 13, 2010

  
Martin Quinn, Special Master